UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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The State of Utah
By Its Attorney General
Paul Van Dam

Plaintiff,

v.

Tele-Communications, Inc.;
TCI K-1, Inc.;
Time Warner, Inc.;
American Television &
Communications Corp.;
ATC Satellite, Inc.;
Warner Cable Communications Inc.;
Warner Cable SSD, Inc.;
Continental Cablevision, Inc.;
Continental Satellite Company, Inc.;
United Artists Entertainment Company;
United Artists K-1 Investments, Inc.;
Cox Communications, Inc.;
Cox Satellite, Inc.;
Comcast Corporation;
Comcast DBS, Inc.;
Newhouse Broadcasting Corporation;
New Vision Satellite;
Viacom International, Inc.;
Viacom K-Band, Inc.;
National Cable Television Association;
PrimeStar Partners L.P.;
General Electric Company;
GE American Communications, Inc.; and
G.E. Americom Services, Inc.,

Defendants.

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COMPLAINT

92 CIV. NO.

JURY DEMAND

PRELIMINARY STATEMENT

1. The State of Utah, by its Attorney General, Paul Van Dam, brings this antitrust action to enjoin, restrain and remedy monopolistic and anticompetitive conduct within the cable television industry. Defendants are nine of the nation's largest cable systems operators, also known as multiple system operators ("MSOs"), certain of their subsidiaries, Time Warner, Inc., the national trade association of cable systems operators, the General Electric Company ("GE") and its subsidiary GE American Communications, Inc. ("GEA", a manufacturer of telecommunications satellites), and PrimeStar Partners L.P., a joint venture of the defendant MSOs and GEA.

2. The defendant MSOs are in the business of delivering multichannel subscription television programming to consumers. They possess monopoly power in each geographic area in which they have been awarded a cable franchise by local governmental authorities. The defendant MSOs are also vertically integrated and own or control many of the subscription programming services carried on cable systems. The defendant MSOs, by virtue of their bottleneck control over the distribution of multichannel subscription television programming, have market power to coerce programmers to deny or restrict actual and potential competitors access to programming services.

3. The defendants, individually and through concerted action, have restrained and eliminated competition in the market for the delivery of multichannel subscription television programming to consumers in order to maintain and protect the

defendant MSOs' cable monopolies. A principal means adopted by the defendant MSOs and their co-defendants to achieve their goals is and has been to deny or restrict actual and potential competitors access to the television programming services necessary to compete with the MSOs.

4. The defendants have taken additional steps to retard the development of Direct Broadcast Satellite ("DBS") systems that have the potential to deliver multichannel subscription television programming services directly and inexpensively to consumers, bypassing the cable systems. The defendant MSOs and GEA have formed PrimeStar Partners L.P. ("PrimeStar"), a DBS joint venture offering a non-competitive television service that utilizes GEA's K-1 satellite. The true purpose of the PrimeStar joint venture, however, is to preempt and forestall entry by other DBS services that could compete with defendant MSOs.

5. The defendants, by their conduct, monopolized, attempted to monopolize, combined and conspired to monopolize and restrained trade in the delivery of multichannel subscription television programming to consumers in violation of Sections 1 and 2 of the Sherman Act. In addition, the PrimeStar joint venture constitutes an acquisition and contemplates further acquisitions in violation of Section 7 of the Clayton Act. Finally, the defendants' actions have violated the antitrust laws of the State of Utah. Plaintiff seeks injunctive relief, treble damages and civil penalties to redress these violations of federal and state law.

I

JURISDICTION AND VENUE

6. This complaint is brought under §§ 4, 4c and 16 of the Clayton Act, 15 U.S.C. §§ 15, 15c and 26, to prevent and restrain violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2 and Section 7 of the Clayton Act, 15 U.S.C. § 18. Pendent state claims are also brought pursuant to Utah Code Ann. §76-10-914.

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337, 1367 and the principles of pendent and supplemental jurisdiction.

8. At all times relevant to this action, each corporation and partnership named as a defendant in this complaint transacted business, did business, was found, or resided in the Southern District of New York. Further, these claims arose, at least in part, in this district. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) and under 15 U.S.C. §22.

II

DEFINITIONS

9. As used in this complaint:

a. "Cable system" means a network of coaxial or fiber optic cable and other terrestrial transmission facilities, crossing public rights of way, constructed or operated pursuant to a local franchise or other license, used in whole or part to deliver multichannel subscription television programming to consumers.

b. "Cable Systems Operator" refers to a person or business entity that owns, operates, or controls a single cable system.

c. "Multiple Systems Operator" or "MSO" means a person or business entity that owns, operates or controls more than one cable system.

d. "CONUS" is an abbreviation for continental United States, i.e. that part of the United States which excludes the states of Alaska and Hawaii and offshore locations such as the Commonwealth of Puerto Rico and the Virgin Islands, and is used to refer to the geographic area of coverage by DBS satellite signals. "Half-conus" refers to signals from DBS satellites which can reach half of the continental United States. "Full-conus" refers to signals which can reach the entire continental United States.

e. "HSD" or "home satellite dish" refers to a backyard or home satellite antenna capable of receiving television signals broadcast by satellite. HSDs that are used in TVRO systems (see ¶ "o") generally receive signals broadcast by C-band (see ¶ "h") satellites, and HSDs that are used in DBS systems generally receive signals broadcast by Ku-band (see ¶ "i") satellites.

f. "FSS" or "fixed satellite service" refers to a television, telephone or other service involving the transmission and reception of radio waves between fixed points by means of satellites as such service is authorized by the Federal Communications Commission ("FCC"). This service may be provided by satellites at specified orbital locations transmitting at different radio frequencies (i.e. C-band or Ku-band) and power levels as authorized by the FCC. The spacing between satellites providing a fixed satellite service is set by the FCC at two degrees. Two degree spacing in conjunction with certain power constraints imposed by the FCC requires the use of a satellite dish typically measuring ten to twenty-two feet in diameter for satellites transmitting at C-band frequencies and four to six feet in diameter for satellites transmitting at Ku-band frequencies.

g. "BSS" or "broadcast satellite service" refers to a television service involving the transmission and reception of radio waves by means of satellites that is intended for direct reception by the general public as such service is authorized by the FCC. This service may be provided by satellites at specified orbital locations transmitting at different radio frequencies (primarily Ku-band) and power levels as authorized by the FCC. The spacing between satellites providing a broadcast satellite service is set by the FCC at nine degrees. Nine degree spacing permits the use of an HSD measuring 20 inches in diameter or less.

h. "C-band" refers to a frequency level (6 and 4 GHz range), at which, as authorized by the FCC, television signals are transmitted by telecommunications satellites. C-band satellites operate in the FSS band. C-band satellite dishes are generally 10 to 22 feet in diameter.

i. "Ku-band" refers to a frequency level (14 and 11/12 GHz range), at which, as authorized by the FCC, television signals are transmitted by telecommunications satellites. Ku-band satellites transmit signals at higher frequencies than C-band satellites and have the ability with high clarity and less interference to reach the entire continental United States with the consumers' use of a less costly and smaller satellite receiving dish or HSD. A medium-power Ku-band satellite operates in the FSS band and its signal can be received by an HSD measuring approximately four and one-half feet in diameter. A high-power Ku-band satellite operates in the BSS band and its signal can be received by an HSD measuring approximately 20 inches in diameter.

j. "DBS" or "Direct Broadcast Satellite" service, refers to a television programming delivery system capable of delivering programming directly from a satellite to a subscriber's HSD. DBS systems utilize Ku-band frequencies at 12.2 to 12.7 GHz which the FCC has assigned primarily for the purpose of transmitting television signals. Ku-band technology enables a single satellite operating in geostationary orbit from either the FSS or BSS band to broadcast to all or part of the entire continental United States. Within the Ku-band spectrum, satellites can operate at medium-power or high-power as permitted by the FCC.

k. "Medium-power DBS" refers to DBS system utilizing medium-power Ku-band satellites (typically 40 to 50 watts per transponder). A medium-power Ku-band satellite transmits television signals in the FSS band which can be received by an HSD measuring approximately four and one-half feet in diameter.

l. "High-power DBS" refers to DBS systems, currently in development, that will utilize high-power Ku-band satellites (typically 200 watts per transponder or more). High-power Ku-band satellites will operate in the BSS band and permit the use of an HSD measuring approximately 20 inches in diameter.

m. "Programmer" or "Programming Service" refers to a person or entity who engages in the business of creating, producing or obtaining rights to programming and assembling that programming into a schedule for distribution to subscription television viewers. For example, HBO, ESPN, Showtime, USA, TNT, MTV and CNN are programmers or programming services. Generally programmers or programming services transmit television signals via satellites, on which they have leased transponders, to distributors such as cable systems, SMATV (see ¶ "p") systems, MMDS systems (see ¶ n") or directly to HSD owners. Programmers are typically paid a fee by the distributor for each programming service carried or selected on a per subscriber basis.

n. "Multichannel Multipoint Distribution Service" or "wireless cable" or "MMDS systems" refers to a multichannel subscription television programming delivery system or service that uses microwave signals to retransmit programming broadcast by satellite. Microwave signals have a range of only 20-25 miles and can be obstructed by buildings and natural structures. Additionally, FCC regulations "protect" microwave signals from interference for a distance of only 15 miles.

o. "Television Receive Only Systems" or "TVRO systems" refers to a television programming delivery system in which an individual homeowner owns an HSD which receives multichannel subscription television programming. Current TVRO systems receive television signals from satellites broadcasting at C-band frequencies and are typically 10 to 22 feet in diameter.

p. "Satellite Master Antenna Television" or "SMATV" refers to a television programming delivery system that serves discrete multi-unit dwellings such as apartment buildings, condominiums, hotels and motels. SMATV operators use their own satellite dish or master antenna to receive programming signals broadcast from C-band satellites. These signals are then distributed to individual residential units by means of coaxial cable. SMATV systems operate essentially as private cable systems but unlike cable systems do not, in general, cross public rights of way and generally do not hold governmental franchises.

q. "Transponder" refers to the part of the satellite that receives and transmits a signal. Generally one transponder is required for every television channel transmitted. Satellites may have multiple transponders.

r. "Encryption" or "Scrambling" when used with respect to satellite delivered television programming, means the transmission of such programming in a form whereby the aural and visual characteristics (or both) are modified or altered for the purpose of preventing the unauthorized receipt of such programming by persons without authorized descrambling equipment.

III

THE PARTIES

10. Plaintiff **State of Utah** by its Attorney General, Paul Van Dam brings this action in its sovereign capacity, as _parens patriae_

on behalf of the general welfare and economy of the State of Utah and on behalf of all natural persons residing therein. The violations of federal and state law alleged herein have caused loss and damage and threaten loss and damage to the property of natural persons residing in the State of Utah and to the general welfare and economy of the State of Utah.

11. Defendant **Tele-Communications, Inc. ("TCI")**, a Delaware corporation, is a multiple system cable operating company with its principal place of business in Denver, Colorado. TCI is the parent company of numerous corporations including defendants TCI K-1, Inc.; United Artists Entertainment Company; and United Artists K-1 Investments, Inc. TCI transacts business in the Southern District of New York.

12. Defendant **TCI K-1, Inc.**, a Colorado corporation and subsidiary of TCI, has its principal place of business in Denver, Colorado. TCI K-1, Inc. is a partner in PrimeStar Partners L.P. TCI K-1, Inc. transacts business in the Southern District of New York.

13. Defendant **Time Warner, Inc. ("Time Warner")**, a Delaware corporation, is a national conglomerate with its principal place of business in New York, New York. Time Warner is the parent of defendants American Television and Communications Corporation; ATC Satellite, Inc.; Warner Cable Communications, Inc.; and Warner Cable SSD, Inc. Time Warner transacts business in the Southern District of New York.

14. Defendant **American Television & Communications Corp. ("ATC")**, a Delaware corporation, is a subsidiary of Time Warner, Inc. ATC is a multiple system cable operating company with its principal place of business in Stamford, Connecticut. ATC transacts business in the Southern District of New York.

15. Defendant **ATC Satellite, Inc.**, a wholly owned subsidiary of ATC, is a Delaware corporation with its principal place of business in Stamford, Connecticut. ATC Satellite, Inc. is a partner in PrimeStar Partners, L.P. ATC Satellite, Inc. transacts business in the Southern District of New York.

16. Defendant **Warner Cable Communications Inc. ("Warner")**, a Delaware corporation and subsidiary of Time Warner, is a multiple system cable operating company with its principal place of business in Dublin, Ohio. Warner transacts business in the Southern District of New York.

17. Defendant **Warner Cable SSD, Inc.**, a wholly owned subsidiary of Warner Cable, is a Delaware corporation with its principal place of business in Dublin, Ohio. Warner Cable SSD, Inc. is a partner in PrimeStar Partners L.P. Warner Cable SSD, Inc. transacts business in the Southern District of New York.

18. Defendant **Continental Cablevision, Inc. ("Continental")**, a Delaware corporation, is a multiple system cable operating company with its principal place of business in Boston, Massachusetts. Continental is the parent of defendant Continental Satellite Company, Inc. Continental transacts business in the Southern District of New York.

19. Defendant **Continental Satellite Company, Inc.**, a wholly-owned subsidiary of Continental, is a Massachusetts corporation with its principal place of business in Findlay, Ohio. Continental Satellite Company, Inc. is a partner in PrimeStar Partners L.P. Continental Satellite Company, Inc. transacts business in the Southern District of New York.

20. Defendant **United Artists Entertainment Company ("United Artists")**, a Delaware corporation, with 57.24% of its outstanding common stock held by TCI, is a multiple system cable operating company with its principal place of business in Denver, Colorado. United Artists transacts business in the Southern District of New York.

21. Defendant **United Artists K-1 Investments, Inc.**, is a wholly owned subsidiary of United Artists Investments, Inc., a wholly owned subsidiary defendant TCI. United Artist K-1 Investments, Inc. is a Colorado corporation with its principal place of business in Denver, Colorado. United Artists K-1 Investments, Inc. is a partner in PrimeStar Partners L.P. United Artists K-1 Investments, Inc., transacts business in the Southern District of New York.

22. Defendant **Cox Communications, Inc. ("Cox")**, a Georgia corporation, is a wholly owned subsidiary of Cox Enterprises, Inc., with its principal place of business in Atlanta, Georgia. Cox Cable Communications, a multiple system cable operating company, is a division of Cox Communications, Inc., and is not separately

incorporated. Cox Communications, Inc. transacts business in the Southern District of New York.

23. Defendant **Cox Satellite, Inc.**, a wholly-owned subsidiary of Cox Communications, Inc., is a Delaware corporation with its principal place of business in Atlanta, Georgia. Cox Satellite, Inc. is a partner in PrimeStar Partners L.P. Cox Satellite, Inc. transacts business in the Southern District of New York.

24. Defendant **Comcast Corporation ("Comcast")**, a Pennsylvania corporation, is a multiple system cable operating company with its principal place of business in Bala Cynwyd, Pennsylvania. Comcast is the parent of defendant Comcast DBS, Inc. Comcast transacts business in the Southern District of New York.

25. Defendant **Comcast DBS, Inc.**, a wholly-owned subsidiary of Comcast, is a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania. Comcast DBS, Inc. is a partner in PrimeStar Partners, L.P. Comcast DBS, Inc. transacts business in the Southern District of New York.

26. Defendant **Newhouse Broadcasting Corporation ("Newhouse")**, a New York corporation, is a multiple system cable operating company with its principal place of business in North Syracuse, New York. Newhouse is the parent of defendant New Vision Satellite. Newhouse transacts business in the Southern District of New York.

27. Defendant **New Vision Satellite** a New York general partnership owned by Newhouse Satellite, Inc. (65%) and Vision Satellite, Inc. (35%) has its principal place of business in Syracuse, New York. New Vision Satellite is a partner in PrimeStar

Partners L.P. New Vision Satellite transacts business in the Southern District of New York.

28. Defendant **Viacom International, Inc. ("Viacom")**, a Delaware corporation, is a multiple system cable operating company and programming service with its principal place of business in New York, New York. Viacom transacts business in the Southern District of New York.

29. Defendant **Viacom K-Band, Inc.**, a wholly-owned subsidiary of Viacom, is a Delaware corporation with is principal place of business in New York, New York. Viacom K-Band, Inc. is a partner in PrimeStar Partners L.P. Viacom K-Band, Inc., transacts business in the Southern District of New York.

30. Defendant **National Cable Television Association ("NCTA")**, a Pennsylvania corporation, is a national cable television trade association with its principal place of business in Washington D.C. NCTA transacts business in the Southern District of New York.

31. Defendant **PrimeStar Partners L.P. ("PrimeStar")**, formerly known as K-Prime Partners L.P., is a Delaware limited partnership, comprised of the following general partners: ATC Satellite, Inc.; Comcast DBS, Inc.; Continental Satellite Company, Inc.; Cox Satellite, Inc.; G.E. Americom Services, Inc.; New Vision Satellite; TCI K-1 Inc.; United Artists K-1 Investments, Inc.; Viacom K-Band, Inc.; and Warner Cable SSD, Inc. The partnership is engaged in the business of distributing multichannel subscription television programming to consumers via a DBS system. PrimeStar's principal place of business is Bala Cynwyd, Pennsylvania.

PrimeStar transacts business in the Southern District of New York.

32. Defendant **General Electric Company, ("GE")** a New York corporation, is an integrated, diversified global company, with its principal place of business in Fairfield, Connecticut. GE is the parent company of GE American Communications, Inc. GE transacts business in the Southern District of New York.

33. Defendant **GE American Communications, Inc. ("GEA ")** is a subsidiary of GE, originally incorporated in the State of Delaware as RCA American Communications, Inc. Its name was changed to GE American Communications, Inc., after GE acquired RCA Corporation. GEA is a manufacturer of telecommunication satellites and is the parent of G.E. American Services, Inc. GEA has its principal place of business in Princeton, New Jersey. GEA transacts business in the Southern District of New York.

34. Defendant **G.E. Americom Services, Inc.** is a wholly owned subsidiary of GEA, originally incorporated in the State of Delaware as RCA Americom Services, Inc. Its name was changed to G.E. Americom Services, Inc. after GE acquired RCA Corporation. G.E. Americom Services, Inc. has its principal place of business in Princeton, New Jersey. G.E. Americom Services, Inc., is a partner in PrimeStar Partners L.P. G.E. Americom Services, Inc. transacts business in the Southern District of New York.

IV

UNNAMED CO-CONSPIRATORS

35. Various other corporations, partnerships, business entities, and individuals not named as defendants participated as

co-conspirators in the violations of federal and state antitrust law alleged in this complaint and performed acts and made statements in furtherance of those violations.

V

TRADE AND COMMERCE

36. The activities of the defendants and co-conspirators that are the subject of this complaint are within the flow of and substantially affect interstate commerce. A not insubstantial volume of trade and commerce is involved in and affected by the violations alleged in the complaint.

37. The delivery of multichannel subscription television programming to consumers occurs, at least in part, through various channels of interstate communication and transportation.

VI

FACTUAL ALLEGATIONS

The Market Structure For The Delivery Of Television Programming

38. Over 90 million American households have televisions. The type and number of programming choices they have, as well as the quality of the picture they see, depend on the system used to deliver television signals to their homes. For years broadcast television was the principal means of distributing programming to viewers. Since 1988, however, cable television, with its enhanced channel capacity and improved signal quality, has replaced broadcast television as the nation's dominant television distribution medium. Approximately 54 million households, or 58 percent of the homes in the United States, subscribe to cable

television systems. Within the State of Utah more than 200,000 households subscribe to cable.

39. Broadcast television involves the transmission of TV signals over-the-air from a broadcaster's terrestrial transmission tower to a TV viewer's rooftop antenna or "rabbit ears" on top of the TV set. Broadcast television programming consists primarily of national network programming broadcast by the network's local affiliate, the affiliate's own local programming and the programming of local independent broadcast stations. The channel capacity of over-the-air broadcasting is severely limited, however, due to regulatory and technical constraints. The Federal Communications Commission ("FCC") has allocated a total of twelve (12) channels within the VHF spectrum for television use. Due to the potential for signal interference, known as "taboos" in the industry, however, no more than seven (7) channels generally coexist in any single market. Within the UHF spectrum, 70 television channels have been allocated. Taboos, however, prevent the use of more than 9 in any single market. In general, broadcast television programming is advertiser supported and TV viewers incur no expense to watch it other than the cost of their television sets and electrical usage.

40. Cable television viewers watch multichannel subscription television programming. Multichannel subscription television programming consists of (1) local broadcast television programming, plus (2) over-the-air broadcast programming imported from outside the local broadcast area (distant signals), (3) superstations (e.g.

WTBS, WOR, KTVT), (4) additional general interest cable channels similar to broadcast television stations, (5) specialized programming such as sports (e.g. ESPN), music (e.g. MTV) and news (e.g. CNN), (6) "premium programming" consisting of recently released movies or other special events and (7) pay per view selections.

41. Multichannel subscription television programming consists of a unique bundle of programming services that cannot be delivered by over-the-air broadcasting. There are no close substitutes for the complement of general and specialized programming services currently offered by cable systems.

42. Multichannel subscription television programming is delivered to a consumer's home by cable systems operators who use satellite broadcasting technology. In a cable system, a programmer's television signal is beamed up to a satellite's transponder, which retransmits the signal back down to a cable system's master earth station or satellite dish. The programming signals are then distributed to the subscriber's television by a network of coaxial cable or fiber optic wire buried underground or suspended from poles along public rights of way and/or easements. Cable systems serve both individual homeowners and multiunit dwellings.

43. Using a combination of satellite transmission technology and cable wiring, cable systems are able to offer television viewers far greater channel capacity and consequently far more programming choices than broadcast television can offer. The

average cable system currently offers 36 channels. Cable television systems also offer viewers superior picture reception to that which can be provided by over-the-air broadcast transmission.

44. Unlike viewers of over-the-air broadcast television, cable system subscribers pay a fee to receive programming. Cable system operators generally offer viewers various levels of service to which they may subscribe. The first level, or tier, usually referred to in the industry as "basic" cable, generally consists of advertiser supported programming that includes local and distant over-the-air broadcast television signals. The subscriber pays a set monthly fee for the basic cable subscription.

45. "Extended basic" programming provides additional advertiser supported cable programming not available over-the-air. In some cable systems extended basic programming is included with the basic offering. Cable system operators also generally offer subscribers an additional tier of "premium" programming services that is commercial free. Each tier of programming requires an additional charge. To receive premium programming, subscribers must pay the basic fee plus an additional monthly fee for each premium service.

46. Multichannel subscription television programming can be delivered to consumers by delivery systems other than cable system operators.

47. Satellite Master Antenna Television Systems ("SMATV") serve discrete multiunit dwellings such as apartment buildings, condominiums, hotels and motels. SMATV operators use their own

satellite dish or master antenna to receive programming signals broadcast from C-band satellites. These signals are then distributed to individual residential units by means of coaxial cable. SMATV systems operate essentially as private cable systems but unlike cable systems do not, in general, cross public rights of way.

48. Television Receive Only Systems ("TVRO") operate generally as single family cable systems in which the individual homeowner uses a satellite antenna or home satellite dish ("HSD") to receive multichannel subscription television programming. HSDs, like the master antennas used by cable operators and SMATV systems, receive television signals from satellites providing fixed satellite services (FSS) at C-band frequencies (6 and 4 GHz) and are typically 10 to 22 feet in diameter.

49. Multichannel subscription television programming can also be delivered by Multipoint, Multichannel Distribution Systems ("MMDS"), also known as "wireless cable". MMDS systems use microwave signals to retransmit to consumers multichannel subscription television programming broadcast by satellite. Microwave signals, however, have a range of only 20-25 miles and can be obstructed by buildings and natural structures. Additionally, FCC regulations "protect" microwave signals from interference for a distance of only 15 miles.

50. Direct Broadcast Satellite Service (DBS), not yet available to consumers to any significant degree because of the defendants' anticompetitive conduct and conspiracy in restraint of

trade, offers an alternative system for delivery of multichannel subscription television programming.

51. DBS services operate similarly to TVRO systems. Programming is delivered by satellite directly to the subscriber's home, eliminating the need for a cable system. Unlike TVRO, SMATV or cable systems, however, DBS services utilize more powerful satellites and transmit television signals at Ku-band frequencies rather than C-band frequency satellites used by the other providers. Ku-band satellites can transmit to the entire continental United States and provide better picture clarity, less interference and greater channel capacity than possible with C-band satellites. Most significantly, Ku-band technology permits households to use much smaller and less costly HSDs than those needed for C-band frequencies.

52. Ku-band satellites can operate at "medium-power" or "high-power". A "medium-power" Ku-band television signal can be received by an HSD measuring approximately four and one-half feet in diameter. The signal from a "high-power" Ku-band satellite can be received by an HSD measuring approximately twenty 20 inches in diameter. A single DBS system has the capability to reach virtually every American TV household.

53. DBS services have the capability and potential to deliver multichannel subscription television programming to homes at a significantly lower cost than cable operators.

The Development of the Cable Television Industry

54. Cable television systems were first introduced in the late 1940's as a means of providing the residents of rural and suburban areas with better reception of over-the-air television broadcast signals. Originally known as Community Antenna Television ("CATV") systems, they usually consisted of an antenna service that received the signals of television broadcasting stations, amplified them and redistributed the television signals via cable wire to subscribing consumers. By 1955, 400 systems served roughly 150,000 subscribers.

55. As the industry expanded into larger towns and cities during the 1960s and 1970s, cable systems began to supplement the local television broadcasts with television signals from other cities and new programming services, some of which were uninterrupted by commercial advertisements and were designed specifically for cable television. By the mid-1970's cable systems reached between 12 to 15 percent of American homes.

56. The cable television industry was revolutionized in 1975 by the introduction of satellites to deliver television programming. Satellite broadcasting made it possible for cable systems to deliver economically a far greater number of programming services with greater picture clarity and less interference than over-the-air broadcasting could provide.

57. With the technological breakthrough of satellite broadcasting, new programming services developed that offered movies, news and sports as well as specialized programming targeted

to discrete audience segments such as children, ethnic and religious groups.

58. Spurred by the new program offerings, the cable television industry in the 1970s and 1980s experienced substantial growth into larger cities with systems providing expanded channel capacity.

59. Satellite broadcasting enabled cable systems to become an economically attractive means of programming distribution in all areas, not just those with poor broadcast reception. By 1990, nearly 60 percent of American homes subscribed to cable television, and almost 90 percent of homes had an opportunity to purchase cable service.

60. As the number of cable subscribers increased, the cable industry grew more concentrated as large cable operators purchased other cable systems, becoming Multiple System Operators ("MSOs"). In 1986 alone, 340 cable system mergers, valued at $8.6 billion, were completed, affecting systems which served more than 6 million subscribers.

61. The nine MSOs named as defendants in this action - TCI, ATC, Continental, United Artists, Warner, Cox, Comcast, Newhouse and Viacom (collectively referred to as the "defendant MSOs") - are among the nation's largest. Their combined national market share of cable subscribers exceeds 45%. Their individual ranking by number of subscribers as of September 1991 was as follows:

	MSO	Subscribers
#1	TCI	6,252,000

#2	ATC	4,637,000
#3	United Artists	2,840,000
#4	Continental	2,760,000
#5	Warner	1,914,000
#6	Comcast	1,654,600
#7	Cox	1,644,200
#11	Newhouse	1,267,200
#15	Viacom	1,069,000

In addition, TCI and Comcast own 35% and 50%, respectively, of the nation's tenth (10th) largest MSO, Storer Communications, Inc., which has 1,605,900 subscribers.

62. MSOs now own or control, wholly, through a parent or in combination with other MSOs, a substantial portion of the programming services they distribute to subscribers. HBO and Cinemax, the nation's first and third most subscribed to premium pay networks, are wholly owned by defendant Time Warner. Defendant Viacom owns the nation's second and fifth most subscribed to premium pay networks, Showtime and The Movie Channel. Time Warner, Viacom and the other MSO defendants, in various combinations, hold equity interests in 14 of the top 20 basic programming networks and interests in other programming services as well.

63. The defendant MSOs are monopolists or possess a monopoly share approaching 100 percent within distinct geographic areas (franchise areas) with regard to the delivery of multichannel subscription television programming to consumers. Virtually every cable operator is awarded a franchise by local authorities which

permits the laying of wire through the public right of way and operation within established areas. The few exceptions to a single cable operator's possession of monopoly power may occur in those discrete geographic areas where a cable operator may be subject to competition from another cable system, referred to in the industry as "overbuilds". As of November, 1990 overbuilds existed in only 65 localities nationwide. There is one (1) overbuild in the State of Utah. Generally, in areas where overbuilds are present, the subscription fee for cable service is substantially lower than in adjoining areas without an overbuild.

64. By virtue of their size and the large number of cable systems they own or control, defendant MSOs have significant power in the purchase of programming services. They are able to obtain rates more favorable than those offered to actual or potential competitors of cable system operators. The defendant MSOs are further able to leverage, and have leveraged, their market power over the distribution of multichannel subscription television programming to deny or restrict actual or potential competitors access to programming services necessary to compete.

65. By virtue of their ownership interests in key programming services, defendant MSOs possess additional and significant power, and have exercised this power, to deny or restrict actual or potential competitors access to the programming services necessary to compete or to raise the programming acquisition costs of their actual or potential competitors.

The Emergence of Delivery Services Competitive
to Cable Systems

66. In September 1976, one year after programmers began distributing television signals to cable operators by satellite, the first HSD or backyard satellite dish (TVRO system) appeared. The sales of satellite dishes to single and multi-family homes soon skyrocketed as more programmers converted to satellite delivered broadcasting and the cost of the dishes to consumers declined. By utilizing their own satellite dishes, individual homeowners were able to receive the same programming signals distributed by cable operators without having to pay the cable operator a fee. Between 1980 and 1990 the number of HSDs sold for use by homeowners (TVRO operators) and multiunit dwellings (SMATV operators) increased from 4000 to more than two million with a substantial number purchased in areas where cable was already available.

67. The proliferation of TVRO and SMATV systems during the early 1980's seriously threatened the cable operators' monopoly control over the distribution of multichannel subscription television programming since these systems bypassed completely the cable operator in delivering multichannel subscription television programming to consumers. In response, numerous cable operators including defendants Comcast and Warner called on their industry to demand that programmers grant them exclusive distribution rights to protect them from the competitive delivery systems that were emerging. In addition, cable operators called on programmers to encrypt or scramble their programming signals in order to frustrate the capability of TVRO and SMATV systems to receive programming.

68. The passage of the Cable Communications Policy Act of 1984 (the "Cable Act") (codified as amended at 47 U.S.C. §§ 35, 152, 224, 309, 521-611) legalized the private reception of unscrambled satellite broadcast television programming. The Cable Act authorized the reception of programming free of charge unless either the signals were scrambled or a marketing mechanism was in place enabling HSD owners to purchase the programming they watched.

69. While the Cable Act allowed a programmer to protect its copyright through scrambling, it did not prohibit the access of competitive delivery systems to multichannel subscription television programming. To the contrary, the Cable Act legalized TVRO systems. As a result, if cable operators were to maintain their local monopolies, they would have to take further measures to control the distribution of programming.

Conspiracy To Prevent, Forestall or Restrict the Development of Competitive Distributors

70. Commencing sometime in or before 1985, the exact date presently unknown to the plaintiff, and continuing to the present, the defendants and their co-conspirators have engaged in a continuing contract, combination or conspiracy in unreasonable restraint of trade in an effort to suppress and eliminate competition in the delivery of multichannel subscription television programming to consumers.

MSOs Demand and Obtain Scrambling and Programming Distribution Rights

71. Within a month of the effective date of the Cable Act, defendant TCI, at the annual HBO Super Bowl Party in January 1985,

urged cable operators to band together to become the exclusive programming distributors to satellite dish owners within their respective franchises and nearby unfranchised areas. TCI, the nation's largest MSO, proposed the formation of a national cable operator cooperative to handle all programming sales to cables' competitors.

72. In February 1985, defendant National Cable Television Association ("NCTA"), a trade association of cable operators, responded to TCI's proposal. Its Board of Directors, including representatives of defendants TCI, Comcast, Continental, Cox, Newhouse, Viacom, Time Inc. and Warner Cable met to discuss the competitive threat posed by satellite dish owners. The president of the NCTA emphasized the need to get all satellite signals scrambled in order to retake the purchasing power from the consumer and return it to the cable operator. A "National Satellite Network Committee" was formed to investigate means to persuade programmers to scramble their signals and to position cable operators as the intermediary sales agent between programmers and HSD owners.

73. At the NCTA's annual convention held in Las Vegas in June 1985, the best attended session was entitled "Star Wars: Business Opportunities from Satellite to Home". During the session, a NCTA-commissioned report called "Study of Economic Impact of Scrambling" was discussed. The study concluded that approximately 1.7 million cable subscribers would be lost to satellite dishes by 1990 if programming signals were not scrambled and that approximately 20 programming signals would have to be

encrypted for scrambling to be effective.

74. Following the June convention, the NCTA's Board of Directors directed its staff to investigate further the TCI proposal and to explore the feasibility of developing a mechanism to facilitate the scrambling of satellite delivered programming services and the marketing of such services to owners of satellite dishes. Among the principal objectives in undertaking the study were (1) to foster the scrambling of premium and basic programming services as rapidly as possible and (2) to facilitate, to the maximum feasible extent, the participation of cable operators in the sale of multichannel subscription television programming to satellite dish owners, especially those in and near their franchise areas.

75. The NCTA study concluded, as had TCI, that the best mechanism to achieve these objectives was the formation of a middleman/consortium of cable operators who would control programming distribution rights. While the report cautioned that the antitrust laws would not permit the consortium itself to play any role in obtaining territorial exclusivity for its members, it suggested that nothing would preclude an individual cable operator from entering into its own exclusive distribution agreement with a programmer.

76. While cable operators were planning a collective response to the TVRO/SMATV problem, basic programmers including Turner Broadcasting Systems (WTBS), MTV networks, ESPN and Group W Satellite Communications were considering their own joint marketing

venture to sell their programming to HSD owners directly. For these programmers, however, the question whether or not to scramble presented a dilemma. Basic programmers, unlike premium programmers, secured significant revenue not from the sale of programming to cable operators but from the sale of advertising time which was priced according to audience size. Scrambling their programming would cut into their viewership, resulting in loss of advertising dollars.

77. The prospect of a programmers' joint venture marketing directly to HSD owners, and bypassing cable operators, heightened the MSOs' greatest fears of a competitive challenge to their distribution monopolies. On August 5, 1985, representatives of WTBS, the leader of the programmers' consortium, were threatened by defendant TCI that if the programmers sold directly to subscribers they would suffer retaliation from MSOs and be excluded from cable systems.

78. Following this threat, WTBS announced the demise of the programmer joint venture on October 10, 1985.

79. Meanwhile in September, 1985, the NCTA announced its plan to counter the competitive threat unscrambled television signals created for cable operators. In proposing the formation of a consortium or joint venture of cable operators to encrypt programming signals, the NCTA acknowledged that cable operators were monopolists and that their local monopolies were seriously threatened by the emerging DBS technology. Moreover, the NCTA noted that competitive DBS services would eliminate the cable

operators' bottleneck control over programming distribution. The only means for a cable operator to maintain its monopoly control would be to become the programming distributor to competing delivery systems.

80. Following the release of the NCTA report, defendants TCI, ATC, Cox, Newhouse, Continental, Comcast, Warner and other MSOs contacted programmers in a coordinated attempt to force them to scramble and designate the cable operator as their distributors. Programmers were threatened with non-carriage or reduced carriage rates for failing to comply with the MSO demands.

81. By early 1986, major cable television programmers including, among others, CBN, Cinemax, CNN, The Disney Channel, HBO, MTV, Nickelodeon, Showtime, The Movie Channel, The Playboy Channel, WTBS, WOR and USA had agreed to scramble their signals.

82. By early 1986 defendants TCI, ATC, Cox, Continental, Newhouse and others had obtained or were in the process of obtaining program distribution rights to TVRO, SMATV and MMDS operators within and contiguous to their franchise areas from programmers such as Arts & Entertainment, BET, CNN, Cinemax, CNN Headline News, the Disney Channel, HBO, Lifetime, MTV, the Nashville Network, Nickelodeon, Showtime, TBS and the Movie Channel.

83. By exercising their local monopoly power, the cable operators, including the defendant MSOs, had succeeded in maintaining their position as gatekeepers, controlling their competitors' access to the programming services necessary to enable

non-cable firms to compete. As gatekeepers, the cable operators could ensure that programming, if made available to their competitors at all, would be offered only at discriminatory or non-competitive prices. In light of these developments, the NCTA/cable operator consortium became unnecessary and was not pursued further.

84. As the programming distributor, the cable operator, including each of the defendant MSOs, typically charged and still charges a commission or distribution fee for its service as intermediary, thereby adding to the programming acquisition costs of TVRO, SMATV and MMDS systems.

85. Programmers such as HBO, TBS and Showtime, that chose in some circumstances, to sell directly to cable's competitors were required to pay a fee to the local cable operator in order to do so. Those fees were denominated a brand usage dividend ("BUD") or market development allowance ("MDA"). This practice discouraged such direct sales as well as added to the cost of TVRO, SMATV and MMDS systems. The amount of the "BUD" or "MDA" was not related to any promotional costs incurred by MSOs.

86. By maintaining their control over programming distribution, the defendant MSOs were also able to eliminate or restrict competition between and among themselves and allocate customers and/or territories. As the programming distributor in their respective franchised areas, the defendant MSOs were protected from competition from each other as distributors of multichannel subscription television programming to TVRO, SMATV or MMDS systems.

Attempts to Form DBS Ventures: Crimson, Hughes and the Formation of K-Prime

87. While the ability of TVRO, SMATV and MMDS systems to compete was constrained by the widespread institution of scrambling and the cable operators' acquisition of programming distribution rights, the threat still remained that DBS services or satellite broadcasting ventures could bypass the cable operators and sell directly to television viewers.

Crimson

88. Sometime in or before 1985, the RCA Corporation ("RCA") decided to launch a DBS service using a series of medium-power Ku-band satellites manufactured by its subsidiary RCA American Communications Inc. Ku-band satellites transmit television signals at higher frequencies than C-band satellites, the then current industry standard, and with more power, can provide wider broadcast coverage while permitting the use of much smaller and less costly HSDs.

89. RCA planned to form a joint venture with a suitable partner or partners and provide a direct to home DBS service as well as offering cable operators the opportunity to convert to Ku-band technology. The plan called for the launch of the "K-1" satellite in 1985 that would provide an interim DBS service until the launch in 1988 of "K-3," a more powerful satellite, as well as a back up satellite, "K-4." The K-3 satellite would have 16 transponders or channels available for a DBS service.

90. In December 1985, RCA reached an agreement with HBO, then a subsidiary of Time, Inc., to be its venture partner and the

Crimson Satellite Associates ("Crimson") was formed. The agreement was formalized on July 1, 1986. The capital cost of the venture was expected to be $161 million, with each partner contributing half of the capital.

91. Central to Crimson's plan was the positioning of HBO as the anchor customer/programmer that would attract other programmers, capitalizing on HBO's marketing strength with the cable programmers and its sister corporation, ATC.

92. The K-1 satellite was successfully launched in January 1986. It will remain operational, i.e. have a "useful life," until 1996.

93. In 1986 RCA was acquired by the General Electric Company ("GE"), and the Crimson project became the responsibility of GE's subsidiary GE American Communications, Inc. ("GEA "). Since that time GE has acted through and in concert with GEA with respect to developing a DBS service.

94. During the period July 1986 through January 1987, Crimson sought repeatedly to purchase programming services from a number of programmers including Turner Broadcasting Services (WTBS, CNN), The Disney Channel, ESPN, Viacom (Showtime, The Movie Channel), USA Network, Home Shopping Network, Christian Broadcast Network, The Weather Channel, Arts and Entertainment, C-Span and Group W. None of the programmers, however, were willing to sell to a DBS service.

95. By mid 1987 Crimson had been unable to obtain programming and it was clear that the venture was foundering. GEA acknowledged that the MSO reaction to Crimson was strongly negative and that

the MSOs had no interest in seeing a cable competitive or "cable unfriendly" DBS service succeed. Indeed, Time Inc. was reconsidering the wisdom of HBO's involvement in the venture in light of the need to maintain good relations with the MSOs that distributed Time's cable programming services as well as the need to protect Time's own cable properties held by ATC.

GEA's "Cable Friendly" DBS Strategy

96. In an attempt to salvage its investment in the Crimson project, GEA decided to pursue a "cable friendly" strategy that would not compete directly with cable operators and would restrict the venture's market to homes in areas not wired or passed by cable.

97. Starting in July 1987, GEA held a series of meetings with defendants TCI and ATC to discuss the formation of a DBS venture using the K-1 and K-3 satellites.

98. During the course of the discussions, ATC and TCI made clear that their involvement was essentially a defensive move and that in order for them to participate the venture would have to be MSO friendly, name ATC and TCI as the programming negotiators and give cable operators the exclusive right to distribute in their franchise area and non-exclusive rights in neighboring non-franchise areas.

99. GEA was concerned about ATC's and TCI's terms. GEA had intended for the DBS joint venture itself, rather than franchised cable operator, to be the primary distributor to subscribers. GEA also had serious reservations about the true motivation of its

prospective partners and feared that the real TCI/ATC agenda might be to delay the development of the venture or even to see it fail. Accordingly, GEA decided to investigate a separate "cable unfriendly" venture with Viacom that would compete against the cable industry directly, while also continuing its discussions with ATC and TCI.

100. Viacom was unwilling to oppose the MSOs, however, and GE dropped the initiative. By February 1988 GEA concluded that significant MSO involvement in a DBS venture was absolutely essential in order to ensure access to programming. GEA concluded further that TCI's size and control over programming made its participation in any venture critical since no other MSO, group of MSOs, or programmers would dare to move against TCI.

101. During mid 1988, GEA proposed to defendants Cox, Newhouse, Comcast and Continental, commonly referred to in the industry as the "Eastern Four," that they join the DBS venture. At numerous meetings held during 1988, the Eastern Four conveyed their position that their involvement in a DBS venture would be for defensive reasons only, that they would prefer that DBS services would never develop and that the participation of TCI as a co-venturer was critical.

102. Despite its efforts to utilize a "cable friendly" approach, GEA had concluded by late October 1988 that even with MSO involvement the use of the K-3 satellite as a national DBS service was impossible. The programmers had rejected the satellite service, its partner HBO was now unwilling to commit to DBS, and

the MSOs' decision to protect their franchises all made K-3 infeasible as a DBS satellite in the United States. GEA needed to find a buyer for K-3, which had not yet been launched, and a use for K-1 that was sitting underutilized in orbit.

The Hughes High-Power Venture

103. Crimson was not the only DBS project encountering difficulties. Starting sometime in or before 1985 Hughes Communications, Inc. ("Hughes"), a subsidiary of General Motors Corporation, was trying to put together a high-power Ku-band DBS venture.

104. High-power Ku-band satellites operate in a frequency spectrum or band known as broadcast satellite service ("BSS") unlike C-band and even medium-power Ku-band satellites that operate in the fixed satellite service ("FSS"). Within the BSS spectrum, minimum satellite spacing was set by the FCC at nine degrees in contrast to the two degree spacing in the FSS spectrum. When used with high-power satellites, the minimum nine degree spacing permits satellites operating in the BSS Ku-band spectrum to transmit signals to home antennas measuring 20 inches in diameter or less - the napkin sized dish.

105. In January 1985 Hughes acquired a license from the FCC to launch a high-power DBS satellite in the highly desirable and centrally located 101° orbital position. A single high-power satellite operating at that location could provide full coverage of the continental United States (CONUS).

106. Hughes, like Crimson, at first pursued a "cable unfriendly" approach intending to compete directly with cable operators for subscribers. Hughes tried to recruit programmers who would be willing to bypass cable operators as middlemen and sell directly to the venture. Hughes approached, among others, Turner Broadcasting, ESPN, HBO, Viacom, the Disney Channel, Fox Television Stations Inc., Group W Broadcasting and the Playboy Entertainment Group, all to no avail.

107. These attempts failed because cable operators had threatened to drop from their cable systems any programmer who sold programming directly to the home.

108. Hughes then decided to pursue a "cable friendly" approach and only offer programming services not typically available or "complementary" to those offered by cable systems. Hughes also invited MSOs to participate in the DBS venture and to be the exclusive program distributors within and contiguous to their franchise areas. Among the MSOs which Hughes solicited in 1987 and 1988 were TCI, Newhouse, Cox, Comcast, Continental and Viacom.

<u>GEA vs. Hughes</u>

109. The DBS ventures proposed by GEA and Hughes crossed paths in Philadelphia on November 1, 1988 when both groups made presentations to the Eastern Four MSOs.

110. Between the two ventures the Hughes project was considered by the MSOs as the greater threat to their cable franchises because its high-power signals could be received by a smaller dish. Indeed, representatives of the Eastern Four told

GEA, prior to the November 1st meeting, that their fear of high-power and their desire to prevent or forestall its development would be the only reason they would participate in any DBS venture.

111. GEA attempted to capitalize on this fear at the November 1, 1988 meeting. It argued that by using K-1 for a DBS venture, the MSOs would get in the business first and discourage or delay Hughes' entry. It argued further, that by entering first the MSOs could tie up programming and make it more difficult for Hughes to proceed with its proposed launch.

112. In subsequent communications with the Eastern Four following the November 1st meeting, GEA emphasized that its medium-power project would permit a smooth transition to a high-power DBS service, which could still be positioned as a service that merely complements cable. GEA asserted that an initial and more costly high-power project like Hughes' venture, however, would necessarily dictate a broader target market in order to be economically feasible.

<u>SHVA Forces the MSO Strategy to Change From Delay to Preemption</u>

113. The passage of the federal Satellite Home Viewer Act ("SHVA") in October 1988 forced the MSOs to change their tactic of negotiating with DBS promoters for the purpose of delaying action.

114. SHVA amended the Communications Act of 1934 and the Copyright Act of 1976 for the purpose of ensuring the availability of satellite delivered television programming to HSD owners. SHVA created a compulsory copyright license that authorized satellite carriers to retransmit television broadcast signals of

superstations and, in certain locations, network stations to satellite dish owners for private viewing.

115. The new law lessened a critical entry barrier to any DBS business - the unavailability of at least some programming - and made it theoretically possible for a DBS venture offering superstation programming to emerge without MSO participation. On the other hand SHVA made available an inexpensive programming package that an MSO led DBS venture could use with little risk of taking away or "cannibalizing" their current cable subscribers.

116. In December 1988, TCI proposed to GEA a DBS approach that would utilize superstations as the programming source. A coalition of cable operators comprised of TCI, ATC, Comcast, Continental, Cox, Newhouse, and United Artists was formed to investigate a DBS venture with GEA based on the TCI proposal. Viacom was later included to prevent it from forming a competitive venture. Each of these MSOs, individually or in smaller combinations, was a potential competitor in the provision of DBS services.

117. In February 1989 the Crimson project was formally put to rest when GEA and HBO agreed to sell the K-3 satellite to a European DBS entity. GEA was forced to abandon the project because Time, HBO's parent, refused to support K-3 as a DBS satellite. Time feared that a DBS venture would devalue its cable properties held by ATC, another Time subsidiary, as well as provoke retribution from the cable operators that carried HBO and other Time programming services.

118. Following the demise of the Crimson project, representatives of GEA, TCI, ATC, Cox, Comcast, Continental and Newhouse met in New York City in March 1989, to discuss a new GE DBS proposal.

119. With K-1 now unencumbered by the Crimson project, GE proposed a DBS venture that would utilize all of K-1's 15 transponders (one transponder had malfunctioned) and offer a programming package comprised of the "best of cable" as well as the superstation line-up proposed by TCI. GEA's "best of cable" package contemplated a DBS service carrying programming services such as HBO, Showtime, ESPN, the Nashville Network, the Christian Broadcast Network, USA, the Disney Channel and CNN. GEA's proposal was rejected by the MSO's.

120. In May 1989, at the annual NCTA meeting in Dallas, Texas, representatives of GEA, TCI, ATC and Comcast met to resolve the differences between the GE and the TCI/MSO proposals. On or about May 23, 1989, GEA, TCI, ATC and Comcast, which was acting on behalf of the Eastern Four, signed a K-1 term sheet. The preliminary agreement contained, among others, the following provisions for the DBS venture:

a) 10 transponders on K-1 would be utilized;

b) programming would consist of independent television stations (superstations) and pay per view;

c) cable operator affiliates would exercise exclusive distribution rights in their respective franchise territories and non-exclusive rights in surrounding non-cabled areas;

d) the service would be marketed to consumers using the cable model with a "bundled" monthly rate that included a fee for equipment rental; and

e) the venture would receive 50% of the retail revenue or $10 per subscriber per month whichever was greater.

121. Throughout 1989 and early 1990 the prospective MSO DBS co-venturers continued to discuss various aspects of the venture. During the coarse of these discussions the NCTA was consulted regarding the proposed venture's business plan and assisted in developing a public policy strategy.

122. On or about August 10, 1989 a conference call was held among representatives of ATC, Cox, Comcast, Continental, Newhouse, TCI, United Artists and Viacom. GEA was purposely excluded from the discussion. During the discussion the MSOs agreed upon the strategic objectives of the K-1 venture.

123. The MSOs' primary objectives were defensive and included the need to protect their existing monopoly profits and to preempt entry by another DBS venture that could compete for cable subscribers.

124. The offensive objectives were for each MSO to become the dominant retailer of multichannel subscription programming in its territory regardless of the technology and to extend each MSO's monopoly power beyond their cable franchise boundaries.

<u>The K-Prime Agreement, later known as PrimeStar</u>

125. On February 8, 1990 a limited partnership agreement and related agreements were signed to utilize the K-1 satellite to offer a DBS service. The partnership was denominated the "K Prime Partners L.P." Parties to the agreement were:

(1) ATC Satellite, Inc., a wholly owned subsidiary of ATC;

(2) Comcast DBS Inc., a wholly owned subsidiary of Comcast;

(3) Continental Satellite Company, Inc., a wholly owned subsidiary of Continental;

(4) Cox Satellite, Inc., a wholly owned subsidiary of Cox;

(5) G.E. Americom Services, Inc., a wholly owned subsidiary of GEA;

(6) New Vision Satellite, a general partnership that is wholly owned by subsidiaries of Newhouse and Vision Cable Communications, Inc.;

(7) TCI K-1, Inc., a wholly owned subsidiary of TCI Development Corporation;

(8) United Artists K-1 Investments, Inc., a wholly owned subsidiary of United Artists;

(9) Viacom K-Band, Inc., a wholly owned subsidiary of Viacom; and

(10) Warner Cable SSD, Inc., a wholly owned subsidiary of Warner.

126. G.E. Americom Services, Inc. retained a 15% equity interest in the partnership and was deemed to have made an initial capital contribution of $5,700,000.00. Each of the nine MSO partners acquired a 9.4444% interest in the venture and made an initial capital contribution of $4,222,222.22 respectively or

$38,000,000.00 in total. G.E. Americom Services, Inc. was designated a non-programmer partner. A separate Parents Agreement between GE, Time Warner, TCI, Comcast, Continental, Cox, Newhouse and Viacom acknowledged each parent's substantial interest in the performance by each subsidiary of its obligations under the Partnership Agreement.

127. The K-Prime agreement manifested the defendants' intent to prevent or retard the development of cable competitive DBS systems and to eliminate or restrain competition between the defendant MSOs in their respective franchise areas.

128. By acquiring the rights to the K-1 satellite from GEA, the defendants were able to reduce substantially the satellite capacity which could be used by a potential DBS competitor to enter the market. At the time, K-1 was the only Ku-band satellite in orbit capable of providing a DBS service. (SBS-VI another mid-power Ku-band satellite was not launched until October, 1990 - see paragraphs 140-147 infra.).

129. Having eliminated the threat that K-1 could be used by a potential competitor, the defendants designed and structured their DBS venture to be a non-competitive television programming delivery service in order to reduce the potential for direct competition with their cable systems and undermine the ability of any cable competitive DBS service to develop.

130. In furtherance of this defensive strategy, the defendants:

a) agreed to restrict the channel capacity of K-Prime by leasing only 10 of 15 available transponders on K-1, thereby limiting K-Prime's ability to compete with cable systems;

b) decided to provide full conus coverage rather than half conus thereby increasing the size of the satellite dish required and decreasing the likelihood of customer acceptance;

c) agreed to lease "preemptible" as opposed to "protected" transponders on K-1 thereby creating a risk of service interruption. If a problem developed with a protected transponder GEA leased to another entity on K-1 or another GE satellite, the other entity could seize a K-Prime transponder; and

d) agreed to offer a non-competitive programming package that would present little risk of cannibalizing their cable subscribers. The K-Prime programming schedule was to consist of 10 channels - 3 pay per view channels and seven national superstations:

WWOR	(New York City);
WPIX	(New York City);
WSBK	(Boston);
WTBS	(Atlanta);
WGN	(Chicago);
KTLA	(Los Angeles) and
KTVT	(Ft. Worth).

This programming package was intended to be non-competitive with cable in order to limit the potential for their DBS service to penetrate the market and attract actual or potential cable subscribers.

Additional Barriers to Entry

131. The defendants also took steps to obstruct the emergence of competitive high-power DBS services as well and to place themselves strategically in a position to control high-power DBS should their efforts to forestall DBS development be unsuccessful.

132. The K-Prime agreement included an option agreement with TEMPO Satellite, Inc., a subsidiary of defendant TCI, and an applicant before the FCC for a high-power Ku-band DBS service. According to the option agreement the K-Prime partners had an exclusive option to lease or purchase the entire capacity of the TEMPO Satellite. Thus the defendants were positioned to tag along with each other from medium-power to high-power DBS service should their attempts to forestall DBS development prove unsuccessful.

133. Additionally, by tying up limited transponders and orbital positions the defendants were erecting entry barriers to true DBS competitors.

134. In order to fortify these barriers to entry the defendants planned to acquire other high-power DBS applicants. In or about March 1990 the defendants agreed to acquire DBS applicants Direct Broadcast Satellite Corporation ("DBSC") and DirectSat Corporation ("DirectSat"). The actual acquisitions were to be made by K-Prime or some other entity as part of a plan to avoid the possibility of a "character review" investigation by the FCC. The FCC is currently conducting a review of TEMPO's fitness or character to obtain a DBS license because of TCI's anticompetitive conduct in Missouri that resulted in a $32.4 million antitrust

judgment against TCI in a case entitled Central Telecommunications Inc. v. TCI Cablevision Inc., 800 F.2d 711 (8th Cir. 1986).

135. The defendants further agreed to control the distribution of popular premium multichannel subscription television programming. Pursuant to the K-Prime agreement any partner or programming affiliate of a partner could not make its programming available to a competitor or similar business unless the programming was also offered to K-Prime on similar terms and conditions. This "most favored nation" provision ensured that key programming services such as HBO, Cinemax, Showtime and The Movie Channel could not be offered to a competing DBS service without also being made available to K-Prime.

136. Finally, the defendants through the K-Prime joint venture agreed to eliminate and restrict competition between the K-Prime partners themselves in each participating MSO's franchise area. The defendants agreed that each MSO defendant would be the retailer of the K-Prime service in its individual franchise areas, thereby ensuring that their local franchise monopolies for distribution of multichannel subscription television programming would be free of competition from the K-Prime product, and that they would not compete against each other in the provision of programming via DBS. The maintenance of the defendant MSO's control over programming distribution in their respective franchise areas is so fundamental to the venture's purpose that under the agreement the partnership's inability to grant exclusive distributorship rights because of

judicial, legislative or governmental action is grounds for termination of the agreement.

137. In November 1990 the defendants began test marketing K-Prime in Fayetteville, North Carolina.

138. In December 1990 the name of the K-Prime partnership was changed to PrimeStar Partners, L.P.

139. As of October, 1991 there were approximately 8500 PrimeStar subscribers in thirty-eight (38) states. The PrimeStar venture has the capability of marketing to the remaining contiguous States.

Barriers to Other DBS Services

140. The defendants, through their acquisition of scarce satellite capacity and their ownership and/or control of television programming, have successfully prevented the emergence of cable competitive DBS systems. Other than K-1, SBS-VI is the only medium-power Ku-band satellite currently in orbit capable of providing a DBS service. The joint venture using SBS-VI known as Skypix, however, was unable to obtain multichannel subscription television programming and is promoting its DBS venture as a home movie service. In the high-power Ku-band spectrum, while there are several applicants before the FCC for a DBS service, none has been able to obtain the television programming necessary to compete with cable operators. To date no high-power Ku-band satellite capable of serving the United States has been launched.

Medium-Power DBS - SkyPix

141. Skypix is a DBS joint venture formed in August 1990 by the Skypix Corporation, a consortium of private investors that formerly included Communications Satellite Corporation ("Comsat"), an international communications firm. Skypix has leased 10 transponders on SBS-VI, a medium-power Ku-band satellite that was launched in 1990.

142. The Skypix service does not intend to compete directly with cable operators. Instead, Skypix is promoting its DBS venture as an 80 channel pay-per-view home movie service that will compete with video stores.

143. Skypix's technical success depends on its ability to develop and use digital compression technology. Digital compression technology refers to techniques being developed to reduce the bandwidth required on a transponder to transmit a television signal. With 8 to 1 compression, for example, a 10 transponder DBS service such as Skypix could offer 80 channels.

144. Even as a non-cable competitive service, Skypix has encountered problems. In December 1990, Comsat withdrew from the venture.

145. In June 1991, Skypix announced that the Home Shopping Network ("HSN") had agreed to become a partner and that HSN would provide its shopping channel to the venture free of charge.

146. On September 3, 1991, however, HSN withdrew from the venture.

147. Upon information and belief, it is alleged that as of the date of this complaint Skypix has no subscribers.

High-Power DBS

148. High-power Ku-band satellites have the potential to deliver DBS television signals directly to a receiving dish the size of a napkin. Permission to launch and operate a high power Ku-band DBS service must be obtained from the Federal Communication Commission.

149. The initial step in the FCC application process is to obtain preliminary authority to construct a DBS system. While preliminary authority is routinely given, an applicant must then satisfy a rigorous two part "due diligence" requirement. First, the DBS permittee must begin construction or complete contracting for the construction of its satellite within one year of the grant of its construction permit. Second, the permittee must begin operation of the DBS service within six years of the grant of its construction permit. Once an applicant has fulfilled the first component of the due diligence requirement, the FCC will assign particular orbital and frequency assignments.

150. The FCC, in accordance with international agreement, has only eight orbital slots or positions to allocate. Within each orbital position, 32 transponder channels have been designated and these are allocated by the FCC. Three of the orbital slots - 119°, 110° and 101° - are most desirable as they are centrally located over the continental United States and permit a single satellite to broadcast to the entire nation. Four orbital slots permit half-

conus coverage - 166°, 157° and 148° in the West and 61.5° in the East - while the 175° slot is located so far out in the Pacific Ocean that it is virtually unusable for a DBS service.

151. There are currently nine applicants before the FCC seeking authority to construct and operate a high-power DBS system: Advanced Communications Corp. ("Advanced"); Continental Satellite Corp. ("CSC"); Direct Broadcast Satellite Corp. ("DBSC"); DirectSat Corp. ("Directsat"); Dominion Video Satellite ("Dominion"); Echostar Satellite Corp. ("Echostar"); Hughes Communications Inc. ("Hughes"); Tempo Development Corporation ("TEMPO") and United States Satellite Broadcasting Co. ("USSB").

<u>TEMPO, Directsat and DBSC</u>

152. TEMPO, one of the applicants before the FCC for permission to construct and operate a DBS service, is a wholly owned subsidiary of TCI.

153. The defendant PrimeStar partners have acquired the exclusive rights to the entire transponder and channel capacity of TEMPO pursuant to an option in the PrimeStar agreement.

154. By acquiring control of TEMPO, the defendants have eliminated a potential DBS competitor in a market with scarce satellite capacity thereby raising the barriers to entry.

155. Directsat is a telecommunications company which specializes in satellite technology and is owned by SSE Telecom, Inc. and private individuals.

156. Directsat has requested permission from the FCC to construct and operate a DBS service from the 101° and 148° orbital

locations.

157. DBSC is a corporation formed for the sole purpose of providing DBS service. Its principals are Kansas City Southern Industries, Inc., a company with operations in transportation, financial services, real estate and broadcasting, and several individuals involved in communications and technologies industries.

158. DBSC has requested permission from the FCC to construct and operate a DBS service from the 61.5°, 110° and 148° orbital locations.

159. In or about March 1990 the PrimeStar partners acquired options to purchase DBSC and DirectSat. By acquiring these options the defendants had the power to eliminate two more potential DBS competitors thereby raising barriers to entry in a market with scarce satellite capacity.

<u>Hughes and Skycable</u>

160. Hughes has completed the first requirement of due diligence and has received permission to operate a DBS service from the 101° and 157° orbital locations. Following Hughes' unsuccessful attempts to obtain programming directly from programmers or to interest the defendant MSOs in Hughes' high-power DBS venture, Hughes sought new partners.

161. On February 22, 1990 Hughes announced the formation of SkyCable, a joint venture between Hughes, NBC, the News Corporation and Cablevision Systems Inc. ("Cablevision"). Cablevision is a large MSO with interests in programming services such as Bravo, American Movie Classics and various sports channels.

162. SkyCable hoped to offer programming that consisted of many of the popular programming services such as ESPN, MTV, USA, Bravo, CNN, TNT, HBO and Showtime and to market their DBS service through existing cable operators.

163. Despite this apparent cable friendly approach, SkyCable was referred to by the MSOs as the "Death Star" that threatened to devour their cable subscribers. TCI complained to GE about involvement in SkyCable through NBC, a GE subsidiary.

164. SkyCable was unable to acquire additional programming. Moreover, its partners with programming ties experienced retaliation from defendant MSOs. NBC was unable to expand cable system carriage of Consumer News and Business Channel (CNBC) once SkyCable was announced despite offering cable operators a rebate for each subscriber. Cablevision received threats that its programming would be dropped by MSOs because of Cablevision's affiliation with SkyCable.

165. The SkyCable venture was dissolved in June 1991 and the Hughes high-power satellite is yet to be launched.

<u>Advanced</u>

166. Advanced has completed the first component of due diligence and has received permission from the FCC to operate a DBS service in the 110° orbital location as well as the 148° slot. Advanced hopes to launch its first high-power satellite and commence a DBS service in the fall of 1994.

167. Advanced's programming strategy is to offer the "Best of American TV" which would include retransmitting broadcast and

superstation television, pay-per-view channels, specialized educational courses and the best of "cable" programming.

168. Starting in 1990 Advanced attempted to obtain programming agreements from the following programmers, among others: MTV, Nickelodeon, Black Entertainment Television, HBO, Lifetime, CNN, TNT, ESPN, CNBC, Bravo, Showtime, The Disney Channel and Arts & Entertainment Cable Network. Despite Advanced's possession of a superior orbital location, it has been unable to obtain commitments from "cable" programmers.

169. Without access to "cable" programming the ability of Advanced to attract investors and subscribers is significantly compromised and may prevent Advanced from entering the market.

<u>USSB</u>

170. USSB, a subsidiary of Hubbard Broadcasting, Inc. and an ABC network affiliate, has completed the first component of due diligence and has received permission from the FCC to operate a DBS service from the 101°, 110° and 148° orbital locations. USSB intends to have its DBS service operational by 1994.

171. USSB has been unable to obtain "cable" television programming for its DBS service. Programmers have told USSB that they are interested in selling to a DBS service but have been threatened with retaliation by MSOs if they do so.

<u>Echostar</u>

172. Echostar, a subsidiary of Echosphere Corporation, has obtained a license from the FCC and has requested permission to construct and operate a DBS service from the 61.5° and 148° orbital

location. Echostar intends to launch its high-power DBS service in 1996.

173. Echostar has been unable to obtain "cable" programming for its DBS service.

Dominion

174. Dominion has obtained a license from the FCC and has requested permission to construct and operate a DBS service from the 119° orbital location. Its anticipated launch date is June, 1994.

175. Dominion intends to offer primarily religious, children's and educational programming not currently offered by cable operators.

176. Dominion is interested in supplementing its programming package with family oriented "cable" programming but has been unable to obtain any commitments. Programmers have told Dominion that they can not sell to a DBS service out of fear of retaliation from MSOs.

CSC

177. CSC has obtained a license from the FCC and has requested permission to construct and operate a DBS service from the 61.5° and 148° orbital locations.

178. CSC has been approached by Tempo and TCI who have offered to invest in CSC and/or purchase its license should Tempo's permit to operate a DBS Service be revoked by the FCC.

PRODUCT AND GEOGRAPHIC MARKETS

179. The delivery of multichannel subscription television programming to consumers constitutes a relevant product market.

180. The geographic market for the delivery of multichannel subscription television programming to consumers is local, defined by the franchise area awarded by local governmental authorities. Within the State of Utah, the local geographic markets include but are not limited to those franchise listed for each defendant MSO on the attached Appendix A.

181. The geographic market in which DBS systems have the potential to operate and compete is national, and includes the local geographic markets described in paragraph 180 above.

FIRST CLAIM FOR RELIEF

SHERMAN ACT SECTION 2

MONOPOLIZATION IN LOCAL MARKETS

182. Plaintiff repeats and realleges each allegation set forth in paragraphs 1-181 above.

183. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, defendants TCI and United Artist Entertainment Company have willfully monopolized the market for the delivery of multichannel subscription television programming to consumers in the respective local geographic markets referred to in paragraph 180 above.

184. Defendants TCI and United Artist Entertainment Company possess monopoly power over the delivery of multichannel subscription television programming to consumers in the geographic markets for which they hold cable television franchises.

Defendants TCI and United Artist Entertainment Company have willfully maintained, extended, leveraged and exercised their monopoly power through the above described conduct in order to eliminate actual and potential competition in said markets.

185. Defendants TCI and United Artist Entertainment Company intended by their actions to:

(a) control the supply and price of services in the relevant markets;

(b) eliminate actual and potential competition in the relevant markets; and

(c) exclude and foreclose other persons from participating in or entering the relevant markets.

186. This monopolization has had, among others, the following effects:

(a) actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;

(b) persons in the relevant markets have had to pay artificially inflated and non-competitive prices;

(c) actual and potential competitors have been injured in their business;

(d) persons in the relevant markets have been denied the benefits of a free, open and competitive market;

(e) in place of a free and open competitive market, monopolies in the relevant markets have been established and maintained; and

(f) the public and the general welfare of the State of Utah has been injured.

187. The monopolization and the effects thereof are continuing and will continue unless the injunctive relief sought by plaintiff is granted. Plaintiff has no adequate remedy at law.

188. As a result of the violations of law alleged in this claim, natural persons residing in the State of Utah have sustained injury to their property in an amount presently undetermined.

SECOND CLAIM FOR RELIEF

SHERMAN ACT SECTION 2

CONSPIRACY TO MONOPOLIZE IN LOCAL MARKETS

189. Plaintiff repeats and realleges each allegation set forth in paragraphs 1-188 above.

190. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, defendants TCI, ATC, Continental, United Artists, Warner, Cox, Comcast, Newhouse and Viacom (collectively referred to as "the defendant MSOs"), defendants TCI K-1, Inc., ATC Satellite, Inc., Warner Cable SSD, Inc., Continental Satellite Company, Inc., United Artists K-1 Investments, Inc., Cox Satellite, Inc., Comcast DBS, Inc., New Vision Satellite and Viacom K-Bank, Inc. (collectively referred to as "the defendant MSO's PrimeStar subsidiaries"), G.E. Americom Services, Inc., PrimeStar, GEA, GE, Time Warner and the NCTA and other co-conspirators have knowingly and intentionally and with specific intent to do so, combined and conspired to monopolize the market for the delivery of multichannel subscription television

programming to consumers in the local geographic markets referred to in paragraph 180 above.

191. The combination and conspiracy has been effected by the means and overt acts described above.

192. The combination and conspiracy has had, among other things, the following effects:

(a) actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;

(b) persons in the relevant market have had to pay artificially inflated and non-competitive prices;

(c) actual and potential competitors have been injured in their business;

(d) persons in the relevant market have been denied the benefit of a free, open and competitive market;

(e) in place of a free and open competitive market, monopolies in the relevant markets have been established and maintained; and

(f) the public and the general welfare of the State of Utah has been injured.

193. The combination and conspiracy and the effects thereof are continuing and will continue unless the injunctive relief sought by plaintiff is granted. Plaintiff has no adequate remedy at law.

194. As a result of the violations of law alleged in this claim, natural persons residing in the State of Utah have sustained injury to their property in an amount presently undetermined.

THIRD CLAIM FOR RELIEF

SHERMAN ACT SECTION 2

ATTEMPT TO MONOPOLIZE IN LOCAL MARKETS

195. Plaintiff repeats and realleges each allegation set forth in paragraphs 1-194 above.

196. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, defendants TCI and United Artists Entertainment Company have knowingly and with specific intent to do so attempted to monopolize the market for the delivery of multichannel subscription television programming to consumers in the respective local geographic markets referred to in paragraph 180 above.

197. The attempt to monopolize has been effected by the defendants TCI and United Artist Entertainment Company by the means and overt acts described above.

198. As a result of the conduct alleged herein there exists a dangerous probability that defendants TCI and United Artist Entertainment Company will monopolize or maintain their monopolies in the relevant markets.

199. This attempt to monopolize by defendants TCI and United Artist Entertainment Company has had, among other, the following effects:

(a) actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;

(b) persons in the relevant market have had to pay artificially inflated and non-competitive prices;

(c) actual and potential competitors have been injured in their business;

(d) persons in the relevant market have been denied the benefit of a free, open and competitive market;

(e) in place of a free and open competitive market, monopolies in the relevant markets have been established and maintained; and

(f) the public and the general welfare of the State of Utah has been injured.

200. The attempted monopolization and the effects thereof are continuing and will continue unless the injunctive relief sought by plaintiff is granted. Plaintiff has no adequate remedy at law.

201. As a result of the violations of law alleged in this claim, natural persons residing in the State of Utah have sustained injury to their property in an amount presently undetermined.

FOURTH CLAIM FOR RELIEF

SHERMAN ACT SECTION 2

CONSPIRACY TO MONOPOLIZE IN THE NATIONAL MARKET

202. Plaintiff repeats and realleges each allegation set forth in paragraphs 1-201 above.

203. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, the defendant MSO's, the defendant MSO's PrimeStar subsidiaries, G.E. Americom Services, Inc., GEA, GE, Time Warner and PrimeStar (collectively referred to as the "PrimeStar defendants"), the NCTA and other co-conspirators have knowingly and with specific intent to do so, combined and conspired to

monopolize the market for the delivery of multichannel subscription television programming to consumers in the national geographic market referred to in paragraph 181 above.

204. The combination and conspiracy has been effected by the formation of the PrimeStar Partners L.P. and the means and overt acts referred to above.

205. The combination and conspiracy has had, among other things, the following effects:

(a) actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;

(b) persons in the relevant market have had to pay artificially inflated and non-competitive prices;

(c) actual and potential competitors have been injured in their business;

(d) persons in the relevant market have been denied the benefit of a free, open and competitive market;

(e) in place of a free and open competitive market, monopolies in the relevant markets have been established and maintained; and

(f) the public and the general welfare of the State of Utah has been injured.

206. The combination and conspiracy and the effects thereof are continuing and will continue unless the injunctive relief sought by plaintiff is granted. Plaintiff has no adequate remedy at law.

207. As a result of the violation of law alleged in this claim natural persons residing in the State of Utah have sustained injury to their property in an amount presently undetermined.

FIFTH CLAIM FOR RELIEF

SHERMAN ACT SECTION 2

ATTEMPT TO MONOPOLIZE IN THE NATIONAL MARKET

208. Plaintiff repeats and realleges each allegation set forth in paragraphs 1-207 above.

209. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, the PrimeStar defendants and others acting in concert with them have knowingly and with specific intent to do so attempted to monopolize the market for the delivery of multichannel subscription television programming to consumers in the national geographic market referred to in paragraph 181 above.

210. The attempt to monopolize has been effected by the formation of the PrimeStar Partners L.P. and the means and overt acts referred to above.

211. As a result of the conduct alleged herein there exists a dangerous probability that the PrimeStar defendants will monopolize the relevant markets.

212. This attempt to monopolize by the PrimeStar defendants has had, among others, the following effects:

(a) actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;

(b) persons in the relevant markets have had to pay artificially inflated and non-competitive prices;

(c) actual and potential competitors have been injured in their business;

(d) persons in the relevant market have been denied the benefit of a free, open and competitive market

(e) in place of a free and open competitive market, monopolies in the relevant markets have been established and maintained; and

(f) the public and the general welfare of the State of Utah has been injured.

213. The attempted monopolization and the effects thereof are continuing and will continue unless the injunctive relief sought by plaintiff is granted. Plaintiff has no adequate remedy at law.

214. As a result of the violations of law alleged in this claim, natural persons residing in the State of Utah have sustained injury to their property in an amount presently undetermined.

SIXTH CLAIM FOR RELIEF

SHERMAN ACT SECTION 1

UNREASONABLE RESTRAINT OF TRADE

215. Plaintiff repeats and realleges each allegation set forth in paragraphs 1-214 above.

216. In violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, the PrimeStar defendants, the NCTA and their co-conspirators have engaged in a contract, combination and conspiracy in unreasonable restraint of interstate trade and commerce.

217. The unlawful contract, combination and conspiracy has consisted of a continuing agreement, understanding and concert of

action among the conspirators, the purpose and effect of which have been to suppress and eliminate competition among the defendants and to suppress and eliminate competition generally in the relevant markets referred to above.

218. The means adopted by the conspirators to achieve these goals includes, but is not limited to, their continuing agreement to deny or restrict programming access to competitive delivery systems, to allocate customers and/or territories among the MSO defendants, and the formation of the PrimeStar Partners L.P.

219. The PrimeStar Partners L.P. constitutes an agreement among and between the PrimeStar defendants, and their co-conspirators to prevent or forestall the emergence of cable competitive DBS services and to eliminate competition between and among the defendant MSOs. It consists of, among other things:

(a) an agreement to allocate customers and/or territories among the defendant MSOs by agreeing not to compete with each other for customers within their respective franchise areas;

(b) an agreement to preempt and occupy scarce satellite capacity that could otherwise be used by a DBS service to compete with defendant MSOs in their franchise areas;

(c) an agreement by the defendant MSOs to utilize their ownership of and/or leverage over programmers to prevent defendant GEA and/or GE from using the K-1 satellite to offer a DBS service that would compete with the defendant MSOs;

(d) an agreement to ensure that each individual defendant MSO would not participate in a DBS service except PrimeStar;

(e) an agreement to structure PrimeStar's programming so it would not compete with the multichannel subscription television programming offered by defendant MSOs;

(f) an agreement to eliminate or restrain actual or potential competition by requiring any programming affiliate of the defendants to make its programming available to PrimeStar on the same terms and conditions made available to any actual or potential DBS competitor.

220. This illegal contract, combination and conspiracy has had the following effects, among others:

(a) actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;

(b) persons in the relevant market have had to pay artificially inflated and non-competitive prices;

(c) actual and potential competitors have been injured in their business;

(d) persons in the relevant market have been denied the benefit of a free, open and competitive market;

(e) in place of a free and open competitive market, monopolies in the relevant markets have been established and maintained; and

(f) the public and the general welfare of the State of Utah has been injured.

221. The illegal contract, combination or conspiracy and the effects thereof are continuing and will continue unless the

injunctive relief sought by plaintiff is granted. Plaintiff has no adequate remedy at law.

222. As a result of the violations of law alleged in this claim, natural persons residing in the State of Utah have sustained injury to their property in an amount presently undetermined.

SEVENTH CLAIM FOR RELIEF

CLAYTON ACT SECTION 7

ANTICOMPETITIVE ACQUISITIONS IN LOCAL MARKETS

223. Plaintiff repeats and realleges each allegation set for in paragraphs 1-222 above.

224. The PrimeStar Partnership agreement by which the PrimeStar defendants acquired a lease for service on GEA's K-1 satellite, the accompanying option agreement by which the PrimeStar defendants obtained an option to lease or purchase service on a satellite or satellites to be constructed by TEMPO and the options to acquire, lease or purchase service on satellites to be constructed by DBSC and DirectSat ("the agreement and acquisitions") constitute acquitions the effect of which may be substantially to lessen competition or tend to create a monopoly in the market for the delivery of multichannel subscription television programming to consumers in the local geographic markets referred to in paragraph 180 above, in violation of Section 7 of the Clayton Act, 15 U.S.C. §18.

225. The agreement and acquisitions have had, among others, the following effects:

(a) actual and potential competition in the relevant markets has been restrained, suppressed and eliminated;

(b) persons in the relevant market have had to pay artificially inflated and non-competitive prices;

(c) actual and potential competitors have been injured in their business;

(d) persons in the relevant market have been denied the benefit of a free, open and competitive market;

(e) in place of a free and open competitive market, monopolies in the relevant markets have been established and maintained; and

(f) the public and the general welfare of the State of Utah has been injured.

226. The violation and the effects thereof are continuing and will continue unless the injunctive relief sought by plaintiff is granted. Plaintiff has no adequate remedy of law.

227. As a result of the violations of law alleged in this claim, natural persons residing in the State of Utah have sustained injury to their property in an amount presently undetermined.

EIGHTH CLAIM FOR RELIEF

CLAYTON ACT SECTION 7

ANTICOMPETITIVE ACQUISITIONS IN THE NATIONAL MARKET

228. Plaintiff repeats and realleges each allegation set forth in paragraphs 1-227 above.

229. The PrimeStar Parntership agreement by which the PrimeStar defendants acquired a lease for service on GEA's K-1

satellite, the accompanying option agreement by which the PrimeStar defendants obtained an option to lease or purchase service on a satellite to be constructed by TEMPO and the options to acquire, lease or purchase service on satellites to be constructed by DBSC and DirectSat ("the agreement and acquisitions") constitute acquisitions the effect of which may be substantially to lessen competition or tend to create a monopoly in the market for the delivery of multichannel subscription television programming to consumers in the national geographic market referred to in paragraph 181 above, in violation of Section 7 of the Clayton Act, 15 U.S.C. §18.

230. The agreement and acquisitions have had and/or will have, among others, the following effects:

(a) the PrimeStar defendants have acquired and will acquire a substantial portion of the medium and high-power DBS capacity that is or will be available in the foreseeable future;

(b) the PrimeStar defendants have denied and/or will continue to deny programming access to actual or potential DBS competitors in the national market or will ensure that it is made available only at noncompetitive prices;

(c) the PrimeStar defendants have refrained and will continue to refrain from competing with each other in providing multichannel subscription television programming in the national market;

(d) actual and potential competition in the relevant markets has been and/or will be restrained, suppressed and eliminated;

(e) persons in the relevant market have had and/or will have to pay artificially inflated and non-competitive prices;

(f) actual and potential competitors have been and/or will be injured in their business;

(g) persons in the relevant market have been and/or will be denied the benefit of a free, open and competitive market;

(h) in place of a free and open competitive market, monopolies in the relevant markets have been and/or will be established and maintained; and

(i) the public and the general welfare of the State of Utah has been and/or will be injured.

231. The violation and the effects thereof are continuing and will continue unless the injunctive relief sought by plaintiff is granted. Plaintiff has no adequate remedy at law.

232. As a result of the violation of law alleged in this claim, natural persons residing in the State of Utah have sustained injury to their property in an amount presently undetermined.

NINTH CLAIM FOR RELIEF

PENDENT STATE CLAIMS

232. Paragraph repeats and realledges each allegation set forth in paragraphs 1-231.

233. The Defendant's and other's conduct constitute a contract, combination or conspiracy in restraint of trade or commerce in violation of Utah Code Ann. §76-10-914(1) (1953 as amended).

234. The Defendant's and other's conduct constitutes the monopolization, an attempt to monopolize and/or a combination or conspiracy to monopolize a part of trade or commerce, in violation of Utah Code Ann. §76-10-914(2) (1953 as amended).

235. The unlawful agreement, arrangement, and combination and the effects thereof are continuing and will continue unless the injunctive relief requested below is granted. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

A. That the Court adjudge and decree that the defendants have committed the violations of federal and state law alleged herein;

B. That judgment be entered in favor of the plaintiff and against the defendants, jointly and severally, for three times the amount of damages sustained by the natural persons residing in the State of Utah in accordance with Section 4 and 4c of the Clayton Act, 15 USC §§ 15, 15c; and UCA §76-10-916(3).

C. That the Court dissolve the PrimeStar Partners L.P.;

D. That the Court order the defendants, to divest themselves of all interests, direct or indirect, in TEMPO Satellite, Inc., Direct Broadcast Satellite Corp. and Directsat Corp.;

E. That the Court order Telecommunications, Inc. to divest itself of all interests, direct or indirect, in programming services;

F. That the Court order Time Warner, Inc., to divest itself of all interests, direct or indirect, in programming services;

G. That the Court order American Television & Communications Corp. to divest itself of all interests, direct or indirect, in programming services;

H. That the Court order Comcast Corporation to divest itself of all interests, direct or indirect, in programming services;

I. That the Court order Continental Cablevision Inc., to divest itself of all interests, direct or indirect, in programming services;

J. That the Court order Cox Enterprises, Inc., to divest itself of all interests, direct or indirect, in programming services;

K. That the Court order Newhouse Broadcasting Corporation to divest itself of all interests, direct or indirect, in programming services;

L. That the Court order Viacom International Inc., to divest itself of all interests, direct or indirect, in programming services;

M. That the Court issue a permanent injunction enjoining the defendants, their divisions, subsidiaries, affiliates and successors, and their directors, officers, employees, attorneys agents or other persons acting for or on their behalf, from directly or indirectly engaging in the violations of law set forth hereinabove;

N. That the Court issue a permanent injunction enjoining the defendant MSOs, their divisions, subsidiaries, affiliates and successors and, their directors, officers, employees, attorneys agents or persons acting for or on their behalf individually, jointly or in concert with others, from directly or indirectly:

(1) owning or controlling, in whole or in part, directly or indirectly a DBS service or an FCC granted channel allotment, orbital position, permit or license for provision of a DBS service;

(2) obtaining an ownership interest in a programming service;

(3) requiring a programming service to provide exclusive distribution rights as a condition of carriage;

(4) discriminating or retaliating against any programmer in the terms and conditions of carriage or refusing to carry its programming on the basis of whether that programmer distributes or makes its programming available to other distributors of multichannel subscription television programming;

(5) requiring that programmers sell programming at discriminatory prices or terms;

(6) requiring that programmers refuse to sell programming to purchasers unless the programming is resold through facilities designated by the defendant MSOs and or their divisions, subsidiaries, affiliates and successors;

(7) requiring that programmers refuse to sell programming to purchasers who resell by delivery systems other than cable systems;

(8) requiring that programmers discriminate in the financial conditions and/or other qualifications that purchasers of

programming must meet in order to purchase programming;

(9) requiring that programmers sell to purchasers on the condition that purchasers resell only in designated zip codes and/or geographical areas;

(10) requiring that programmers limit the number of agents that can resell programming on a nationwide basis to consumers, whether individuals, hotels/motels, apartment complexes;

(11) requiring that programmers not sell programming without the cable operator as the middleman;

(12) jointly operating any venture that delivers multichannel subscription television programming to consumers, including PrimeStar Partners L.P.; and

(13) delivering multichannel subscription television programming by means other than cable systems, in areas in which it or its subsidiary has a franchise to deliver multichannel subscription television programming through cable systems.

O. That the Court issue a permanent injunction enjoining defendant NCTA, its directors, officers, employees, agents, and successors from directly or indirectly:

(1) continuing a formal or informal meeting after:

(a) any person makes any statement, or communicates any information, concerning one or more cable operator's intentions or decisions regarding a refusal or threatened refusal to carry programming or a withdrawal or threatened withdrawal from carriage of programming from a programmer; or

(b) any person makes any statement, or communicates any information, concerning the adopting, establishing, fixing, maintaining, or standardizing the prices and/or terms for the sale of programming to consumers and/or distributors who compete with cable operators; or

(2) communicating or providing any comments or advice to any cable operator or cable operators' association regarding any matter described in (O)(1)(a) or (O)(1)(b).

P. That the Court order each defendant to pay a civil penalty in an amount not exceeding $500,000.00, or the actual damages sustained by the state or any of its political subdivisions for each violation of Utah law that it has committed;

Q. That the Plaintiff be awarded its costs of suit, including a reasonable attorney's fee; and

R. That the Plaintiff be granted such other and further relief as the Court may deem just and proper.

Designation of Local Counsel

The undersigned hereby designates the Attorney General of the State of New York, or his designee, as its attorney of record for purposes of this case, including receipt of service of process.

Paul Van Dam
Attorney General of the
State of Utah

By: Patrice M. Arent
Patrice M. Arent (PMA 2593)
Assistant Attorney General
111 State Capitol Bldg.
(801) 538-1331

Dated: May 8, 1992

JURY DEMAND

Plaintiff hereby demands trial by jury of all issues properly triable thereby.

Paul Van Dam
Attorney General of the
State of Utah

By: Patrice M. Arent
Patrice M. Arent (PMA 2593)
Assistant Attorney General
111 State Capitol Bldg.
(801) 538-1331

Dated: 5/8/92

Local Counsel

Robert Abrams
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State of New York

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APPENDIX A

TCI Cablevision of Utah

Alpine, Utah County

Al's Apple Acre Mobile Home Park, Davis County

American Fork, Utah County

Aurora, Sevier County

Bountiful, Davis County

Carbondale, Carbon County

Castle Dale, Emery County

Centerfield, Sanpete County

Centerville, Davis County

Clearfield, Davis County

Clinton, Davis County

Coalville, Summit County

Draper, Salt Lake County

Duchesne, Duchesne County

East Carbon, Carbon County

East Layton, Davis County

Elite Mobile Home Park, Davis County

Elk Ridge, Utah County

Ephraim, Sanpete County

Fairview, Sanpete County

Ferron, Emery County

Fillmore, Millard County

Fountain Green, Sanpete County

Fruit Heights, Davis County

Grantsville, Tooele County

Gunnison, Sanpete County

Harrisville, Weber County

Heber City, Wasatch County

Helper, Carbon County

Hill Air Force Base, Davis County

Hoytsville, Summit County

Huntington, Emery County

Jeremy Ranch, Summit County

Kanab, Kane County

Kaysville, Davis County

Layton, Davis County

Lehi, Utah County

Midvale, Salt Lake County

Midway, Wasatch County

Milford, Beaver County

Morgan City, Morgan County

Morgan County, Morgan County

Moroni, Sanpete County

Mount Pleasant, Sanpete County

Murray, Salt Lake County

Nephi, Juab County

North Ogden, Weber County

North Salt Lake, Davis County

Ogden, Weber County

Ogden Canyon, Weber County

Orangeville, Emery County

Orem, Utah County

Park City, Summit County

Payson, Utah County

Pleasant Grove, Utah County

Price, Carbon County

Provo, Utah County

Redmond, Sevier County

Richfield, Sevier County

Richmond, Cache County

Riverton, Salt Lake County

Roosevelt, Duchesne County

Roy, Weber County

Salem, Utah County

Salina, Sevier County

Salt Lake City, Salt Lake County

Sandy, Salt Lake County

Smithfield, Cache County

Somerset Condominiums, Davis County

South Jordan, Salt Lake County

South Ogden, Weber County

South Salt Lake, Salt Lake County

South Weber, Weber County

Spanish Force, Utah County

Spring City, Sanpete County

Spring Glen, Carbon County

Spring Lake, Utah County

Springville, Utah County

Stansbury Park, Tooele County

Sunnyside, Carbon County

Sunset, Davis County

Tooele, Tooele County

Tooele Army Depot, Tooele County

University Village, Salt Lake County

Washington Terrace, Weber County

Wellington, Carbon County

Wendover, Tooele County (Elko, Nevada)

West Bountiful, Davis County

West Jordan, Salt Lake County

West Valley City, Salt Lake County

Woods Cross, Davis County

<u>United Cable TV of Moab</u> (United Artist Entertainment Co.)

Moab, Grand County